

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Walter Myrick

v.

Case No. 05-cv-450-JD

State of New Hampshire

ORDER

The Plaintiff, Walter Myrick, initiated this civil action by complaint dated December 21, 2005. On June 1, 2006, counsel for the Defendant filed a Suggestion of Death indicating that the Plaintiff was now deceased. Pursuant to Fed. R. Civ. P. 25(a)(1), counsel for the Defendant served Plaintiff's next of kin, Barbara Fournier,¹ with a copy of the suggestion of death by waiver of service on September 16, 2006. Ms. Fournier accepted service on October 3, 2006. The waiver of service form informed Ms. Fournier that, pursuant to Fed. R. Civ. P. 25, she must file a motion to substitute party within 90 days of service or the action may be dismissed by the court.

No motion to substitute having been filed and next of kin having been properly served with the Suggestion of Death, the case is DISMISSED. See Fed. R. Civ. P. 25(a)(1). The Clerk shall enter judgment accordingly.

SO ORDERED.

January 24, 2007

/s/Joseph A. DiClerico, Jr.

Joseph A. DiClerico, Jr.
United States District Judge

cc: Nancy J. Smith, Esq.
Barbara Fournier, Next of Kin

¹Initially counsel for the Defendant attempted to serve Catherine Myrick, who had been identified as Plaintiff's next of kin in the New Hampshire State Prison inmate records. After efforts to locate Ms. Myrick were unsuccessful, the Defendant alternatively served Ms. Fournier as next of kin, who is represented to be Ms. Myrick's sister.